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To: Assembly Committee on Homeland Security and State Affairs
Fr: Scott Stenger for the Alliance of Wisconsin Retailers
Re: Support of SB 12/Assembly Bill 31
Date: March 31, 2011

The Alliance of Wisconsin Retailers, LLC is comprised of leading national and Wisconsin-based retailers. The AWR supports Senate Bill 12 and would like to thank Senator Van Wanggaard and Rep. Dale Kooyenga for introducing the bill.

Last year the Department of Revenue sent letters to retailers (attached) informing them that they were in violation of state statutes because they were advertising discounts on merchandise equal to or greater than the sales tax. Despite the fact that the retailer was still remitting its full sales tax obligations, the Department said the ad was illegal. Senate Bill 12, will clarify that as long as retailers remit the proper sales tax, they can run these types of advertisements.

Wisconsin Statutes Section 77.52(4), as amended by 2009 Wis. Act 2, provides that:

“[i]t is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property or items, property, or goods under s.77.52(1)(b),(c), or (d) sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor.”

The Wisconsin Department of Revenue has interpreted this section to mean that an advertisement stating that “a discount equal to or greater than the sales tax” is a violation of Section 77.52(4). DOR holds to this interpretation even when the advertisement further states “sales tax will then be added to the reduced purchase price.”

The legislative intent of the advertising restriction in Section 77.52(4) was to prevent large retailers, thought to be better able to absorb the sales tax than smaller and weaker retailers, from exploiting this presumed advantage. Whatever validity this notion may have had in 1961 when Section 77.52(4) was enacted, it has no validity in today's retail environment, in which single-digit profit margins are the goal of retailers of all sizes and descriptions.

Non-misleading sales-tax-based discount advertising is for the benefit of consumers. The sales tax remitted to the state appears separately and clearly on the customer's receipt. Senate Bill 12 will clarify the rules that apply to retailers and allow them flexibility in their advertising.



State of Wisconsin • DEPARTMENT OF REVENUE

2135 Rimrock Rd. MS 8-40 • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 264-7779 • FAX (608) 261-6240 • Janet.Abrams@revenue.wi.gov

April 8, 2010

Attn: Tax Manager
[REDACTED]

Dear Sir or Madam:

The Department of Revenue was recently made aware of an e-mail advertisement sent on March 30, 2010 for [REDACTED] stores. The advertisement indicated that [REDACTED] was offering "a discount equal to or greater than the sales tax." The advertisement later states the following "Discount on in-store merchandise equal to or greater than the applicable sales tax rate. Sales tax will then be added to the reduced purchase price."

Section 77.52(4), Wis. Stats. (2007-08), as amended by 2009 Wis. Act 2, provides that "[i]t is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor."

The statement "a discount equal to or greater than the sales tax" contained in this advertisement is a means of stating to the public that you will not be adding the tax to the selling price. We believe that this statement is in violation of sec. 77.52(4), Wis. Stats. (2007-08), as amended by 2009 Wis. Act 2, and should be discontinued immediately and in the future.

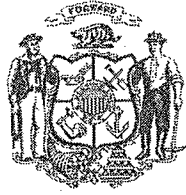
Please see the article titled "Can Retailers Absorb the Sales Tax for Their Customers?", which was published on page 4 of the Sales and Use Tax Report 3-07 (December 2007) (enclosed). This report can also be downloaded from the Department of Revenue's web site at <http://www.revenue.wi.gov/ise/sales/index.html>.

If you have questions or concerns regarding this letter, please feel free to contact me.

Sincerely,


Janet K. Abrams
Staff Specialist

/encl



Van H. Wanggaard

Wisconsin State Senator

Thank you Mr. Chairman and committee members for this committee hearing on Senate Bill 12.

Senate Bill 12 is a common sense, pro-consumer, and pro-retail bill. Under current law, retailers commit a misdemeanor if they advertise directly or indirectly that they will assume all or part of the sales tax to be paid by the consumer on the purchase price on an item. If a business advertises this discount, it can be punished with up to 30 days in jail or a \$500 fine PER OFFENSE. Whether an offense is defined as a sale or an advertisement is unclear. This bill repeals that crime.

For example, businesses that claim you can "save your sales tax" or that they are having a "tax-free sales event," are guilty of a misdemeanor. Because they mention that the retailer will pay your sales tax, these advertisements are a crime. In reality, the business is simply discounting its price 5% to 5.6%, depending on the sales tax in that county. Sales tax will still be collected on the new, discounted purchase price, and at the correct amount.

Let me say that again, Sales tax will still be collected on the purchase price of the item sold. It always has been collected and, presumably, it always will be. The only difference is that sales tax will now be collected on a purchase that is approximately 5% cheaper than its original price.

Opponents of this legislation may argue that this is a giveaway to big business without regard for the little guy. I do not buy this argument. This bill does not eliminate the law prohibiting loss leaders, or any other consumer protection. All this bill does is eliminate the criminal penalty for advertising a 5% discount as a sales tax break. Conceivably, companies that do not advertise may be harmed. But companies that do not advertise now will not be harmed further by this legislation.

The bill is also pro-jobs. The fewer requirements Wisconsin imposes on retailers, the more likely retailers are to locate businesses and jobs in this state. Because retailers will not need to alter national advertisements for Wisconsin, more businesses will open in Wisconsin - creating more jobs.

This is not just pro-consumer, pro-jobs legislation. This bill also ensures proper utilization of Department of Revenue resources. Although likely not high on the list of expenditures by the Department of Revenue, Revenue does attempt to enforce these laws. These resources could be better used to find tax cheats - or better yet, not spent at all.

Senate Bill 12 is a simple bill. It eliminates a meaningless and victimless crime. It has no negative fiscal effect, and may open the door to further discounts for consumers.

Thank you for your time, and I'll be happy to answer any questions.

Serving Racine County - Senate District 21



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Sincerely,

Janet K. Abrams
Staff Specialist

/encl



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We're offering you a special discount equal to the amount of sales tax on all in-stock furniture, mattress, area rug or furniture accessory purchases. The purchase price will be reduced by a percentage equal to the applicable sales tax rate. Applicable sales tax will be added to the reduced purchase price in accordance with applicable laws. Tax-break offer does not apply to delivery charges. Excludes Tempur-Pedic mattresses, custom order and clearance furniture. Offer valid now through Monday, September 7, 2009.

\$298

Queen, 2-pc. Set

Simmons Firm

Tempur-Pedic

Tempur-Pedic

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Tempur-Pedic

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Queen, 2-pc. Set

Simmons Firm

Tempur-Pedic

Tempur-Pedic

Tempur-Pedic

Tempur-Pedic

\$648

\$688

Queen, 2-pc. Set

Simmons Beautyrest

Following with memory foam.

FERTILIZER: Fines will be given for violations

From A-1

Webb said established laws already have developed root systems, so phosphorus is not necessary.

Appleton hasn't used phosphorus on its grounds, including Reid Municipal Golf Course, for two years, said William Lecker, the city's parks and recreation director.

"The only time phosphorus fertilizer would be used is for new grass, but generally we've found that is not something we need," Lecker said.

According to DATCP, bags of fertilizer should have three numbers printed on them indicating, in order, the percentage of nitrogen (N), phosphorus (P) and potassium (K) in the bag. If the middle number is 0, the fertilizer is phosphorus-free.

Pallets of phosphorus-free fertilizer, along with a pallet of bags containing phosphorus, line an aisle in the home and garden department of Krueger's.

"Those (phosphorus-containing) bags are old. We can only display them through (today). Then we have to put them in the back room, although I expect we'll have very few remaining at that time," Webb said.

The ban contains several notable exemptions, including allowing the use of phosphorus fertilizers in order to establish new grass, using seed or sod, or on lawns where a soil test shows a deficiency in phosphorus.

Fertilizers with phosphorus also may be applied to farm pastures, land used to grow grass for sod and any other land used for agricultural production, including

home gardens.

The ban doesn't specifically prohibit the sale of phosphorus fertilizers, but bans sales by retailers if they know the buyer intends to violate the law.

The ban does prohibit the display of fertilizer bags containing phosphorus, but allows retailers to tell customers or post signs indicating the fertilizer is available upon request.

"We'll post a sign," Webb said.

The ban imposes fines ranging from \$50 for a first offense to as much as \$500 for subsequent offenses for violating the ban, including applying fertilizer to frozen ground and unintentionally spreading fertilizer on sidewalks and driveways.

"If you get fertilizer granules on the driveway or sidewalk, sweep or hose them into the grass or sweep them up and put the granules back into the bag or in the trash," said Charlene Khazae, DATCP fertilizer program manager.

The ban on turf fertilizers containing phosphorus on lawns includes old bags of phosphorus-laced fertilizer forgotten for the winter in the corners of garages and garden sheds.

"After April 1 that old fertilizer is not legal to use unless you meet the exceptions (in the new law)," Khazae said.

Khazae said old fertilizer can be disposed of in the trash or taken to a local Clean Sweep collection, particularly if it contains a pesticide like those found in "weed and feed" products.

Steve Wideman: 920-993-1000, ext. 302, or wideman@postcrescent.com

RAW MILK: Momentum grows for open sales

From A-3

2007, 26 states allowed some form of raw milk consumption as of 2007, according to a survey from the National Association of State Departments of Agriculture.

Wisconsin law currently bans raw milk sales directly to consumers. Statutes allow an exemption for occasional sales to individuals who visit farms in person, but farmers can't advertise and sales can't be a regular part of their business.

But momentum has been growing to legalize broad sales. Danou said he intro-

duced the bill to give farmers another avenue of income in the recession and to curtail "overzealous" state Department of Agriculture investigations of farmers selling milk.

The Department of Agriculture, Trade and Consumer Protection has launched eight investigations into raw milk sales since last summer, agency spokeswoman Donna Gilson said. She did not have any estimates of how many farms sell raw milk in the state.

"When the Legislature passes a law, they do expect us to enforce it," she said.

GAMING: Fellowship a unique opportunity

From A-3

to the Watson program, said the fellowship's goal is to foster the recipient's personal growth.

Winter has traveled and studied overseas before. In 2008, he spent 3 1/2 months in Europe and he took 2 1/2 weeks of that time to explore on his own.

"I do love being with my family and do like familiar faces and places," he said. "I also like doing things on my own."

However, the fellowship

offers a unique opportunity, even though it will mean limited contact with family and friends.

"The chance for personal development and growth through independent research is just exciting to me," Winter said. "When I come home, I hope I will be better able to define myself... and how I can incorporate (what I have learned) into my life and go on living life beyond being a student."

Larry Aika: 920-993-1000, ext. 292, or larry@postcrescent.com

CENSUS: Accurate count could boost federal aid

From A-1

food vans and people who sleep outside and in automobiles.

Special training was provided to census staff to preserve the dignity and safety of the homeless, he said.

In a blog on the U.S. Census Bureau's Web site, census director Robert M. Groves said the homeless count won't be perfectly successful.

"We'll attempt to count everyone in a homeless state, but acknowledge that such a goal cannot be attained," Groves said in his blog.

Warming Shelter officials hope the head count provides benefits to the shelter and its clients, namely through future state and federal grants.

"It also boosts the self-esteem of the homeless. It literally says 'You count,'" said Warming Shelter vice president Gary Crevier. "They realize they are part of the United States."

Debra Cronmiller, executive director of the Emergency Shelter of the Fox Valley, 400 N. Division St., Appleton, said the welcome the census count.

Cronmiller said for each person counted, the com-

munity could get up to \$1,200 in federal aid for transportation, housing and other human services.

"So much of what is federal grant writing is asking to define problems in your area," Cronmiller said. "If we undercount the homeless we minimize the problem and we make ourselves less eligible for federal funds."

The census count comes as Warming Shelter kicks off a drive to raise \$250,000 in donations to avoid getting a bank loan to finance construction of a 5,000-square-foot, 40-bed permanent overnight shelter be-

hind the St. Vincent de Paul retail store, 1924 W. College Ave., Appleton.

Warming Shelter currently operates a rotating shelter using churches throughout the Fox Cities. That operation ends on May 2.

The organization already has \$475,000 in donations for the project, said Warming Shelter director of development Rod Vander Hyden.

Vander Hyden said Warming Shelter hopes to break ground on the project in April.

Steve Wideman: 920-993-1000, ext. 302, or wideman@postcrescent.com

Archbishop apologizes for Milwaukee priest's sex abuse

The Associated Press

MILWAUKEE — The archbishop of the Milwaukee Archdiocese says the pope shouldn't be held accountable for mistakes made in Wisconsin while investigating an alleged pe-

dophile priest.

Archbishop Jerome Listek acknowledged Tuesday that mistakes were made in the case of the Rev. Lawrence Murphy. The priest who died in 1998 is accused of molesting some 200 deaf boys

from 1950-74 at St. John's School for the Deaf near Milwaukee, where he worked.

Pope Benedict XVI has come under criticism after documents revealed that the office he held as Cardinal Joseph Ratzinger halted

church judicial proceedings

against Murphy.

Listek says history will show Ratzinger dealt with the matter timely and decisively. He says the mistakes were made in Milwaukee, not Rome. He also apologized to the victims.

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